

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2675 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

JAGDISHBHAI CHANDULAL PARIKH
VERSUS
AMBALAL SANKALCHAND MEHTA & ORS.

Appearance:

MR VC DESAI, for the Petitioner
MR JJ YAGNIK, for the Respondents

Coram: S.K. Keshote,J
Date of decision:28.1.97

C.A.V. JUDGMENT

Heard learned counsel for the parties.

2. Challenge is made by the petitioner by this Special Civil Application to the order Annexure 'D', dated 27th September 1983 of the respondent No.4 granting stay of the election of the society till final decision of the suit pending before the Board of Nominees.

3. The facts of the case are that the respondent No.3 is a cooperative housing society registered under the Cooperative Societies Act, 1961 (hereinafter referred to as the Act 1961). The petitioner and respondents No.1 and 2 are its members. In April 1970, the respondent No.1 and 2 were elected as Chairman and Secretary respectively of the society and they took charge of the record of the society from the outgoing Chairman and Secretary. The annual general meeting of the society had not been called for, its accounts were not audited and the office bearers were acting prejudicially to the interest of the society, numerous proceedings, namely (i) inquiry u/s.86 of the Act, 1961 and (ii) proceedings u/s.81 of the Act, 1961, were initiated. In the first proceeding, the respondent No.2 was disqualified to hold any post of the society for three years. The second proceeding resulted in holding of annual general meeting of the society on 10th August 1980 and election of new managing committee has been carried out. The proceedings of the special general meeting dated 10th August 1980 were challenged by respondents No.1 and 2 by filing Special Civil Application No.3218 of 1981. In this Special Civil Application, the petitioner and three other members were the party. At the stage of admission of said Special Civil Application, for smooth functioning of the affairs of the society, consent terms signed by the petitioner, respondent No.1 and 2 and other parties to the petition were submitted in the Court. As per the consent terms, this Court appointed Shri R.L.Dave to convene a special general meeting and for conduct of business thereof as agreed. In spite of fixing various dates for completing clauses of the consent terms, the respondent No.1 and 2 deliberately not complied with the same. The petitioner in para-5 of the Special Civil Application has given out that affidavit of documents, as per the consent terms were not filed on or before 19.2.82 by respondents No.1 & 2 and the amount of Rs.700/- each has not been deposited by respondents No.1 and 2 in time. So the submission of the petitioner is that at every stage, the respondents No.1 and 2 were trying to delay and prolong the matter. The respondents No.1 and 2 have not handed over the record of society to Shri R.L. Dave. Not only this, the respondent No.2 did not return the documents like the copy of provisional list and final

list of voters to Shri R.L. Dave. Any how in pursuance of the order of this court and as per the consent terms, Shri Dave started his work. He prepared provisional list of voters of the society and after publishing election programme a meeting of the society was to be held on 20th March 1983. At this stage, the respondents No.1 and 2 filed Arbitration suit No.74 of 1983 before the Registrar's Board of Nominee in which only Shri R.L. Dave was impleaded as a party. The petitioner or any other members of the society were not impleaded as party. Prayer has been made for granting stay of the meeting dated 20th March 1983. Prayer has also been made for grant of interim relief, but ex parte stay order was not granted by the Registrar's Board of Nominees. Against the order of the Board of Nominees dated 19th March 1983, declining to grant ex parte stay to the respondents No.1 and 2, a revision application No.42 of 1983 was preferred by them before the Cooperative Tribunal, Ahmedabad and there they succeeded to get ex parte injunction against holding of meeting on 20th March 1983 till the said revision application is finally decided. This order of the Tribunal dated 27th September 1983 is impugned in this Special Civil Application.

4. During the course of proceedings of this Special Civil Application, I tried to see that the parties may arrive at a settlement and the society may function in a democratic way, but despite of granting sufficient time, the parties have not arrived at any settlement. After hearing the learned counsel for parties, what this Court feel is that none of the parties are interested to see that election of managing committee of the society takes place. The society is a registered cooperative society and election of the managing committee thereof has to be held within reasonable interval as provided under the Act, but for the reasons best known to the petitioner and respondents No.1 and 2, they are not willing to hold elections of the society. A simple matter of election has been dragged into litigation by respondents No.1 and 2 and the petitioner were also party thereof. None of them have taken any real and effective measures to see that election of the society takes place and elected body comes in possession of the record of the society and controls it and regulates its functions. There may be vested interests of respondents No.1 and 2 which may be the apparent cause for them not to permit Shri Dave to hold elections of the society. At the same time, it seems that the petitioner is also not interested to see the election of the society is conducted. Still the petitioner insist before this Court that election should be conducted strictly in accordance with the consent

terms as given before this Court by the parties in the previous litigation. This Court has asked the learned counsel for the petitioner that much water would have flown after the date on which the consent terms were agreed upon and as such it is now in the fitness of things that the voters' list should be prepared taking into consideration the position as it exists today. At the same time, the respondents have all rights to make their objections against the provisional voters' list, but what the petitioner contend is that the provisional list which has been prepared by Shri Dave should be considered and the respondents may file objection against that voters' list. That also does not seems to be a correct approach to the issue. The record of the society, during the course of arguments it transpires, is lying in some criminal case in Criminal Court and some of the records may possibly be there with respondent No.1 and 2. The order which has been passed by the Tribunal in this case is also difficult to appreciate. In the election matter, after the election programme has been notified the Court or the Tribunal should not have interfered with it. The parties have their remedies after conclusion of election by filing Election Petition, but normally, no interference should have been made in the conduct of election after the programme has been declared. The respondents have filed the Lavad case after election programme has been declared. The Registrar's Board of Nominee had declined to grant any interim relief to stay the election and that order of the said authority was perfectly legal and justified in the facts of the case. The matter was taken up before the Tribunal in revision application. In revision application, the Tribunal has very very limited powers of review of the orders impugned. Moreover, when the order was only of interlocutory character, the revisional jurisdiction should have sparingly been exercised. It was a case in which interim relief was declined, meaning thereby in the Lavad case, the right of the parties were not finally adjudicated. To grant a temporary injunction is a matter of discretion with the authority and in a given case it may decline to grant the same. In the matter of grant of interim relief, merely, the plaintiff has a prima-facie case does not justify the grant of same. In addition to the prima-facie case, the party who approaches the authority or revisional Tribunal should establish that in case the interim relief is declined, it will cause irreparable injury which cannot be compensated in terms of money to the party who approached to the Court. Not only that, but further the Court has to be satisfied that the balance of convenience does lie in favour of the grant of interim relief. The Tribunal

while deciding the matter has altogether lost sight of the important fact that this Court has, in the earlier Special Civil Application, on the consent terms of the parties, appointed Shri R.L. Dave as an officer of the society for the sole object and purpose of conducting the elections thereof. The election was to be held under the directions of this Court in the Special Civil Application, may be on the consent terms entered into by the parties, and as such the Tribunal should not have interfered in the matter. Moreover, the Tribunal has also lost sight of another important fact that it was an interlocutory stage where in the Lavad suit, the Board of Nominee declined to grant injunction and at that stage, no interference should have been made. Election has to be held and it was long due. The parties were litigating the matter and ultimately this Court has also thought fit to decide the matter, may be on consent terms so that the election of the society may be held expeditiously. The very purpose and the object of the provisions of the Act and Rules framed thereunder and bye-laws as well as the order of this Court given on consent of the parties had been frustrated by the Tribunal by grant of interim injunction in the matter of election of the society and that too after the election programme has been announced. It is the concern of all to see that after commencement of the election programme, election should be permitted to be completed and whatever grievance of the parties is there in the matter, should be left to be agitated in the appropriate election dispute redressal forum. Taking into consideration the totality of the facts of this case, the order of the Gujarat State Cooperative Tribunal, Ahmedabad dated 27.9.83 in Revision Application No.42 of 1983 is wholly arbitrary and perverse and it cannot be allowed to stand. This case is a clear example to show how the elections of the society are delayed. The Tribunal, by granting the interim relief, has delayed the election of the society for more than a decade.

5. In the result, this Special Civil Application succeeds. The order made by the Gujarat State Cooperative Tribunal in revision application No.42 of 1983 dated 27.9.83 is quashed and set aside. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)